



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE 200245059
WASHINGTON, D.C. 20224

SIN: 4942.03-07
No Third Party Contacts

Date: AUG 13 2002

Contact Person:

Identification Number:

Telephone Number:

T. LEON B4

Employer Identification Number:

Legend:

B:

x:

y:

Dear Applicant:

This is in response to a letter dated December 21, 2001, from B's authorized representative, concerning whether B, an organization recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and classified as a private foundation as described in section 509(a) of the Code, may make three set-asides, each under the suitability test of the Code under section 4942(g)(2)(B)(i), for its taxable year ending December 31, 2000.

The information submitted shows that B's principal activity is making grants to public charities exclusively for charitable purposes, including providing scholarships at institutions of higher learning, improving health care, and meeting basic human needs. B has approximately y in assets.

B has a long history of making multi-year grants, but it has not, in the past, used the set-aside procedure. B has determined that it is now appropriate to implement such procedures in order to clearly account for grants made in particular areas each year, even though distribution of the full amounts granted may ultimately take several years. With respect to each of the three areas of charitable activity for which set-asides are requested, B has a strong tradition of support.

The set-asides will serve to expand B's grant-making programs with new projects in these areas of historical support. While the amounts of the set-asides requested may appear large, they are not so large in the context of B's overall grant-making program.

The first set-aside is in the amount of \$ x to be used to fund programs at hospitals in B's geographic area and other research institutions for genomic and other such cutting-edge scientific and medical research and for improved patient care. B is a major funder of area hospitals, having distributed more than \$ x in grants for activities in this area in recent years. B has determined that advanced medical research is the next major area of support. To that end, B would like to allocate this \$25x to be spent over the next three to five years to support one or more research programs and the related clinical trials and patient care. Should the programs prove promising, B will grant additional amounts.

B believes that the project is better accomplished by a set-aside, as opposed to an immediate grant, of \$ x because the institutions have not yet fully established a new collaborative model to coordinate research in this area, and some of the work may have to be undertaken separately. Once the projects are crystallized in the near future, B will spend at least the amount currently set-aside within the next three to five years.

The second set-aside is in the amount of \$ x for the specific purpose of promoting needs-blind admissions policies at liberal arts colleges, universities, and other schools in the United States and abroad, to be distributed within the next three years. B contemplates direct grants to educational organizations for the purpose of making higher education accessible to all qualified students regardless of financial resources. It will distribute the entire amount as soon as institutions which are possible recipients determine the assistance that would be needed to allow them to make admissions decisions without taking into account an applicant's ability to pay.

B claims the project is better accomplished by a set-aside because the educational institutions with which B has been working to maintain or develop needs-blind admissions policies have each been affected differently by the vagaries of financial markets of the last year. B intends to implement and begin immediate payment of grants to institutions as soon as those institutions have assessed the extent to which changes in their endowments affect their abilities to establish or maintain needs-blind policies.

The third set-aside is in the amount of \$ x to be expended in the next two years to significantly expand the capacity of emergency food organizations in the United States for direct relief of poverty. This project is better accomplished by a set-aside as B intends to provide its grants as soon as the prospective grantees make known whether, and if so, the rate at which, they can absorb the amounts of the proposed grants. In any event, all of the amount set-aside will be distributed within the next 24 months.

Section 4942 of the Code imposes an excise tax on private foundations that fail to make certain minimum annual "qualifying distributions."

Section 4942(g)(1) of the Code defines a "qualifying distribution" as (A) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons or (ii) a private foundation which is not an operating foundation, except as otherwise provided; or (B) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B) of section 4942(g)(2).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within five years, and the project is one which can be better accomplished by such set aside rather than by immediate payment of funds (the "suitability test").

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Taxes Regulations provides that an amount set aside for a specific project that is for one or more of the purposes described in section 170(c)(1) or (2)(B) may be treated as a qualifying distribution in the year in which set aside (but not in the year in which actually paid), if the requirements of section 4942(g)(2) and this paragraph are satisfied. The requirements of this paragraph (b) are satisfied if the private foundation establishes to the satisfaction of the Commissioner that the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set aside satisfies the suitability test, or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test is satisfied if the foundation establishes that the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related

investments. The regulation cites as an example of a suitable project a plan to fund a specific research program that is of such magnitude as to require an accumulation of funds before beginning the research, even though not all of the details of the program have been finalized.

Rev. Rul. 74-450, 1972-2 C.B. 388, involved a set-aside granted to a private operating foundation, under the suitability test, for a project involving the conversion of a portion of newly acquired land into an extension of an existing wildlife sanctuary and the remainder into a public park under a four-year construction contract which required most of the payments during the last two years.

Rev. Rul. 75-511, 1975-2 C.B. 450, denied a foundation's request for approval of a set-aside for annual scholarship payments. The foundation's principal activity was the making of scholarship grants. The foundation selected new scholarship recipients each year; the scholarships typically covered a three year period and were paid annually. In the past, the foundation simply paid each year's scholarship installments out of its current income. Instead of continuing that practice, however, the foundation sought approval to set aside, for each grantee, an amount sufficient to cover that grantee's scholarship payments for the three-year scholarship term. Under this proposal, the foundation would then pay scholarship installments out of each grantee's set-aside account until those funds were depleted. The foundation did not show that making scholarship grants in this case was an activity that could be better accomplished by a set-aside than by immediate payment of funds.

With respect to the three set-asides, B must show (1) that the amount set-aside accomplishes one or more purposes described in section 170(c)(2)(B) of the Code, (2) that the set-aside amount will be paid for the specific project within five years, and (3) the project is one that can be better accomplished by such set-aside rather than by immediate payment of funds (the "suitability test").

The first set-aside is in the amount of \$ x to be used to fund programs at area hospitals and other research institutions for cutting-edge scientific and medical research and for improved patient care. Support of scientific and medical research furthers purposes described in section 170(c)(2)(B) of the Code. B will allocate \$ x to be spent over the next three to five years to support one or more research programs and the related clinical trials and patient care. The project is better accomplished by a set-aside because the institutions have not yet fully established a new collaborative model to coordinate research in this area, and some of the work may have to be undertaken separately.

The second set-aside is in the amount of \$ x for the specific purpose of promoting needs-blind admissions policies at liberal arts colleges, universities, and other schools in the United States and abroad, to be distributed within the next three years. The project is within the purposes described in section 170(c)(2)(B) of the Code because it contemplates direct grants to educational organizations for the purpose of making higher education accessible to all qualified students regardless of financial resources. B will distribute the entire amount as soon as institutions, which are possible recipients, determine the assistance that would be needed to allow them to make admissions decisions without taking into account an applicant's ability to pay.

The project is better accomplished by a set-aside than immediate grants totaling \$ x because the educational institutions with which B has been working to maintain or develop a needs-blind admissions policies have each been affected differently by the vagaries of financial markets of the last year. B intends to implement and begin immediate payment of grants to institutions as soon as those institutions have assessed the extent to which changes in their endowments affect their abilities to establish or maintain needs-blind policies.

The third set-aside is in the amount of \$ x to be expended in the next two years to significantly expanding the capacity of emergency food organizations in the United States for direct relief of poverty as contemplated under section 170(c)(2)(B) of the Code. This project is better accomplished by a set-aside as B intends to provide these grants as soon as the prospective grantees make known whether, and if so, the rate at which, they can absorb the amounts of the proposed grants. In any event, all of the amount set-aside will be distributed within the next 24 months, satisfying the requirements of section 4942(g)(2) of the Code.

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Accordingly, the three set-asides by B accomplish one or more purposes described in section 170(c)(2)(B) of the Code; the set-aside amounts will be paid for the specific projects within five years; and, the projects are ones that can be better accomplished by such set-asides rather than by immediate payment of funds.

Based on the facts and circumstances as stated above, we rule that:

B's three set-asides of funds will satisfy the suitability test of section 4942(g)(2)(B)(i) of the Code, and therefore will constitute a qualifying distribution for B's fiscal year ending December 31, 2000.

We direct your attention to section 53.4942(a)-3(b)(8) of the regulations, entitled "Evidence of set-aside." This section provides that a set-aside approved by the Internal Revenue Service shall be evidenced by the entry of a dollar amount on the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates.

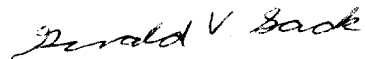
Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

Because this ruling could help resolve future questions about your federal income tax status, you should keep it in your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4